

the control and charge of the above land being Pt. Lot 370/110 Mk. XVII, on which premises No. 75-D, Moonstone Lane, Singapore, stands.

As you are not the tenant on record, you have no right to occupy the said land and we are instructed to give you notice, which we hereby do, requiring you to quit the said land on the 31st day of August, 1957. Failing compliance, legal proceedings will be taken against you for ejectionment."

The arrears of rent of \$40 were tendered by Madam Puteh binte Ghani but were refused by the appellants.

The appellants took no action on their letters until December, 1959, when they took the present proceedings. In the meantime Madam Puteh binte Ghani died on the 11th April, 1958, and the husband of Madam Puteh binte Ghani, the 1st respondent, continued to reside in the premises with the other respondents who are his relatives.

The District Judge, after hearing the evidence, found as a fact that Gunny Puteh died sometime prior to 1949 and held that the appellants, upon the facts, are estopped from denying that Madam Puteh binte Ghani became their tenant upon their acceptance of the rent. The District Judge in his grounds of decision said that, "the plaintiff having accepted the rent after notice that Gunny Puteh was dead and that rent would be paid by Madam Puteh binte Ghani cannot now be heard to say that it did not intend to enter into the relationship of landlord and tenant." The District Judge arrived at the conclusion that Madam Puteh binte Ghani was a tenant by estoppel on two facts:

- (1) by her telling the appellants that Gunny Puteh was dead and
- (2) by her paying the rent and the appellants accepting the rent.

Now let us examine what the position was before the appellants became the owner.

According to the letter of Madam Puteh binte Ghani dated the 29th June, 1949, to the appellants (which is set out above), Madam Puteh binte Ghani said that Gunny bin Puteh died sometime in 1929 and that she had reported that fact to the then owner, the Estate & Trust Agencies, but nowhere in her letter did she say that the Estate & Trust Agencies had accepted her as the tenant on the death of her father. In fact her letter says that the Estate & Trust Agencies would not change the tenancy into her name. No effort was made by the respondents to prove that Madam Puteh binte Ghani became a contractual tenant of Estate & Trust Agencies after her father's death or that she became a tenant by estoppel. The evidence was that according to the list submitted by the Estate & Trust Agencies to the appellants, when the latter purchased the property, the Estate & Trust Agencies did not regard Madam Puteh binte Ghani as the tenant. There has been no finding by the District Judge that Madam Puteh binte Ghani became a contractual tenant or a tenant by estoppel prior to 8th September, 1947.

On the 8th September, 1947, the Control of Rent Ordinance, 1947, came into force and it is clear that on that day Madam Puteh binte Ghani became a statutory tenant as she was then in possession of the premises and was a member of Gunny Puteh's family, within the meaning of section 2 of that Ordinance.

So, at the time the appellants became the owners of the property, Madam Puteh binte Ghani was the statutory tenant of the premises and the appellants were obliged to accept rent from her and their acceptance of the rent from her could not create a contractual tenancy between them. In my view the District Judge was wrong in coming to the conclusion that the appellants were estopped from denying that Madam Puteh binte Ghani became their tenant upon their acceptance of the rent.

On the death of Madam Puteh binte Ghani the 1st respondent, the husband of Madam Puteh binte Ghani and the 9th respondent, the daughter of Madam Puteh binte Ghani, are not protected by section 16 of the Control of Rent Ordinance (Cap. 242). The other respondents are not even members of Madam Gunny binte Puteh's family within the meaning of section 2 of the Ordinance.

This appeal must be allowed. There will therefore be an order for possession as claimed.

Appeal allowed.

Solicitors: L. A. J. Smith; P. T. Wong & Co.

Re AN ADVOCATE & SOLICITOR

[O.C.J. (Rose C.J., Tan Ah Tah and Chua JJ.)
March 2, 1962]

[Singapore — Originating Summons No. 152 of 1961]

Advocate and Solicitor — Professional misconduct — Preparation of false affidavit — Advocates and Solicitors Ordinance (Cap. 188), ss.25 and 30.

The preparation by a professional man of an affidavit that is untrue, and that is known to him to be untrue, is a very serious offence. In some cases of this kind the appropriate penalty would be either to strike off the offender (if it was a very bad case) or to suspend him for a period.

In this case the Court recorded a censure and ordered the respondent to pay costs.

ORIGINATING SUMMONS.

A. P. Godwin for the applicant.

L. A. J. Smith for the respondent.

Rose C.J. (delivering oral judgment): It is out of no disrespect to the arguments of learned counsel that I propose to give judgment straightaway. But as we have formed a definite view upon this matter it would seem to be in the interest of all concerned that there should be no undue delay.

The facts of the case are these; that the respondent, Mr. Muthuswamy, was acting for a particular client, a woman named Mahmooda, in a civil case in the High Court before one of my

brother Judges; it was an action for possession and the client stated at page 35 of the record "I am the owner of No. 140 Hemmant Road. I purchased the house from Cheong Siew Peng who executed a deed in my favour on the 9th January, 1959. I instructed my solicitors to give notice to the defendants."

That was her case; and that was on the 7th of July, 1960, when the case was adjourned part-heard. Before the matter was resumed—certainly before the matter was concluded—bankruptcy proceedings were instituted against this same woman Mahmooda and the same advocate Mr. Muthuswamy was still appearing for her. He then drafted an affidavit, to which she swore, which appears at page 37 of our documents in which she said: "I have no separate property of my own and I have never carried on any business in Singapore or in the Federation of Malaya."

Well now, of course, there are various circumstances in which the affidavit could have been prepared. It could, for example, have been prepared in Mr. Muthuswamy's office without his knowledge. He could have inserted the sentence by inadvertence. But that is not what he himself says. In answer to questions by a member of the Committee (page 5 of the report) Mr. Muthuswamy said: "I did not think I should distinguish between legal and equitable ownership. I was overworked at the time. I do not say I had forgotten. It did not occur to me that it was a relevant point."

It is important, I think, here to turn to a letter that forms part of the documents in this case written by Mr. Muthuswamy himself to the Secretary of the Bar Committee dated the 1st of June, 1961. He sets out the facts of the matter and then he says in the final paragraph: "I am sorry that I have made a grievous mistake in confusing between statements on affidavits and statements on pleadings. I knew definitely that on pleadings anything could be denied which will throw the burden of proof upon the opponent to prove the positive. I have fallen into the error of assuming that the same rules apply even in respect of affidavits." That is what he said in his letter and the matter is referred to in the report of the Committee at page 5, at the bottom, where they say: "Mr. Muthuswamy further informed the Committee that he thought that he could draft the affidavit in the form of a pleading and put the Petitioning Creditor to prove that Mahmooda had property of her own; and that had he realised the importance of the affidavit he would have cut out the words about ownership." They go on to say that Mr. Muthuswamy agreed that his client Mahmooda had never at any time stated that

A she was the legal owner. To put it another way, it may perhaps be called a lawyer's point and not the client's point at this stage of the proceedings.

B Well now, treating the matter on the most lenient footing, is it open for a solicitor or an advocate—or indeed any professional man—to say: "I drafted an affidavit containing something false because I thought that I could do the same thing in an affidavit as I could do in pleadings"?

C Different standards, perhaps, may reasonably apply to people in different walks of life. If, for example, a farmer or a peasant appearing in person puts in a false statement of fact in an affidavit and then says, when challenged: "I was confused. I have read somewhere in a book that in pleadings you can say what you like, and I thought I could do the same in an affidavit," that might, I do not say it would, be an excuse. I cannot accept, however, that in the case of a professional man that is a permissible consideration. It just is not permissible for a solicitor or barrister—or a Judge if it comes to that—to say: "Well, I was confused. I was overworked and I drafted in an affidavit something false to my knowledge because I had in my mind that in a pleading one is entitled to include an allegation whether it is true or false."

F That seems to us to dispose of the present matter. In our opinion this is clearly a matter which must be regarded as professional misconduct within the meaning of section 25 of the Advocate and Solicitors Ordinance.

G The question now arises as to what penalty should be imposed. It is, of course, clear that the preparation by a professional man of an affidavit that is untrue, and that is known to him to be untrue, is a very serious offence. As has been said so often, an advocate or solicitor is an officer of the Court and as such he owes a duty not only to himself and to his client but also to the Court. And there is no doubt that in some cases of this kind the appropriate penalty would be either to strike off the offender (if it was a very bad case) or to suspend him for a period.

H In this particular case we have seriously considered whether it was not our duty to suspend Mr. Muthuswamy for some relatively brief period. We have decided, however, not to do that. We have decided to take a lenient course in this matter, in part because the Committee themselves have taken a lenient view. It may be, as Mr. Godwin suggests, that they have taken too lenient a view. Nonetheless it was their view and we consider that we should pay regard to it.

We do not wish it to be thought that in adopting so lenient a course we do not regard the matter as serious. We do. We think it is a very serious thing for a solicitor to act in this way; and we only hope that the solicitor in question will bear this in mind and will not misunderstand our indulgence when we say we do not propose to impose any penalty in this matter.

We think that justice will be done if a censure is recorded; which we so order.

The question arises as to costs. It is usual to require the respondent to pay costs in these cases. We think that the limit of our indulgence has already been reached in merely censuring Mr. Muthuswamy. He must pay the costs of the inquiry and of this hearing in Court.

Order accordingly.

Solicitors: P. Coomaraswamy; L. A. J. Smith.

SOH KWAN HONG & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Ong J.) October 2, 1961]

[J.B. — Criminal Appeal No. 25 of 1961]

Rubber Dealers Enactment, No. 65 Johore, s.13(ii) — Rubber estate labourers and rubber tappers — Charge of being a "forwarding agent."

The appellants, who were estate labourers or rubber tappers, were carrying rubber sheet and scrap out of an estate on their bicycles when they were stopped by the police. Each of them was subsequently charged of "being a forwarding agent did receive x sheets of rubber weighing y katties without a written authority from the consignor for the despatch thereof as required under section 13(ii) of the Rubber Dealers Enactment and thereby committed an offence punishable under section 18 of the said Enactment." They were each sentenced to a fine of \$100, or one month's imprisonment.

Held: "to forward" means "to send on" and a "forwarding agent" is a person who receives rubber from a consignor for sale or consignment. In conveying the rubber from the estate to the estate owner, the appellants were acting merely as servants, carrying out the orders of their employer, and the latter, when issuing his orders to them did so as their employer and not as a consignor of goods. "Forwarding agent" must be read in its context with "consignor" and there cannot be one without the other.

CRIMINAL APPEAL.

Omar Salleh for the appellant.

Syed Abdul Rahman (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Ong J.: These five appellants appeal against their conviction by the Magistrate at Pontian for an offence under section 13(ii) of the Rubber Dealers Enactment, No. 65 of Johore, for which each was sentenced under section 18 to a fine of \$100, or one month's imprisonment.

The appellants, who were estate labourers or rubber tappers, were carrying rubber sheet and scrap out of an estate on their bicycles when they were stopped by the police at Parit Kudus.

A They were subsequently charged in similar terms, except as to the amount of rubber each was carrying at the time, and for the purposes of this appeal it is necessary only to set out here, as a specimen, the charge against the 4th appellant, which is as follows:

B "That you on 12.2.61 at about 3.00 p.m. at Parit Kudus, Pontian in the State of Johore being a forwarding agent did receive 20 sheets of rubber weighing 45 katties and 1 sack of scrap rubber weighing 80 katties without a written authority from the consignor for the despatch thereof as required under section 13(ii) of the Rubber Dealers Enactment No. 65 and thereby committed an offence punishable under section 18 of the said Enactment."

C The marginal note of section 13 reads: "Written authority for sale or consignment," and subsection (ii) is as follows:

"No forwarding agent shall receive any rubber, except upon delivery to him by the consignor of a written authority for the despatch thereof."

D The only question for determination in this appeal is whether the appellants were "forwarding agents." The plain answer is "No", and I should have thought it plain as a pikestaff that estate labourers and rubber tappers can no more be called forwarding agents than the trishaw-peddaller, the bullock-carter or the lorry-driver who is instructed by me to bring out the rubber from my estate to my house or store. "To forward" means "to send on," and a "forwarding agent" is a person who receives rubber from a consignor for sale or consignment. In conveying the rubber from the estate to the estate owner, the appellants were acting merely as servants, carrying out the orders of their employer, and the latter, when issuing his orders to them did so as their employer and not as a consignor of goods. E "Forwarding agent" must be read in its context with "consignor" and there cannot be one without the other. The appellants therefore were not guilty of the offence. I therefore allow the appeal and quash the convictions of all the appellants and order the fine to be refunded to each of them.

G *Appeal allowed.*

Solicitors: M. Ismail & Co.

CHAN PHUAT KHOON v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Good J.J.A.) November 3, 1961]

[K.L. — F.M. Criminal Appeal No. 24 of 1961]

Evidence — Dying declaration — Evidence Ordinance, 1950, s.32 — Credibility of deceased.

H The appellant was convicted on a charge of intending to cause miscarriage of a woman, an act which caused the death of the said woman, and was sentenced to four years' imprisonment. The only evidence which unequivocally connected the appellant with the subsequent abortion and death of the woman consisted of statements made by the deceased to her husband and to the doctor at the hospital prior to her death. These statements were admitted in evidence under section 32 of the Evidence Ordinance, 1950.